

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jerome Henderson,

Case No. 1:94cv106

Petitioner,

District Judge Michael Barrett
Magistrate Judge Michael R. Merz

v.

Terry Collins, Warden

Respondent.

ORDER

This matter is before the Court upon the Magistrate Judge's April 24, 2017 Report and Recommendation ("R&R"), recommending that Petitioner's Rule 60(b)(6) motion be denied (Doc. 246). Petitioner filed Objections to the R&R on May 16, 2017 (Doc. 247) and Respondent filed a response (Doc. 248). Also before the Court are Petitioner's Objections to two Notation Orders issued by the Magistrate Judge striking Petitioner's reply and denying Petitioner's motion to appoint counsel. (Docs. 251, 254).

As the Magistrate Judge explained, Petitioner's *pro se* motion seeks relief from the Court's March 27, 2015 Order (Doc. 231) adopting the Magistrate Judge's Report and Recommendation (Doc. 221) that Petitioner's prior motion for relief from judgment be denied (Doc. 207).

The Magistrate Judge reached three primary conclusions. First, the Magistrate Judge concluded, to the extent Petitioner argued he rights under § 3599 were violated, that Petitioner's attorney cannot be forced by Petitioner to file frivolous motions. Indeed, an attorney has an ethical obligation not to do so. Second, the Magistrate Judge rejected Petitioner's argument that there existed "irregularities or procedural defects" entitling him to relief because he was not

personally served with documents. The Magistrate Judge explained that a litigant represented by counsel does not have a right to be personally served with documents in a case. Relatedly, the Magistrate Judge also concluded Petitioner's motion fails on the merits, as he has not shown a procedural defect warranting relief. Finally, the Magistrate Judge concluded Petitioner's Motion fails on procedural grounds because the issues raised were available to him on his appeal.

When objections to a magistrate judge's report and recommendation are received on a dispositive matter, the assigned district judge "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). After review, the district judge "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*; *see also* 28 U.S.C. § 636(b)(1). General objections are insufficient to preserve any issues for review: "[a] general objection to the entirety of the Magistrate [Judge]'s report has the same effect as would a failure to object." *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). Nevertheless, the objections of a petitioner appearing *pro se* will be construed liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

When objections to an order of a magistrate judge are received on a non-dispositive matter, the district judge must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law. Fed. R. Civ. P. 72.

Petitioner's objections to the Magistrate Judge's R&R (Doc. 247) fail to object to any specific portion of the R&R as is required by Rule 72(b)(2). Accordingly, Petitioner's objections are insufficient to direct the Court's attention to any particular issues contained therein, and are without merit. Instead, Petitioner's 40-page document is effectively a successive habeas corpus petition. (*See generally* Doc. 247).

Upon review, the Court finds no error in the Magistrate Judge's recommendation that Petitioner's Rule 60(b) motion should be denied. Petitioner's objections (Doc. 247) are therefore **OVERRULED**.

After consideration of Petitioner's remaining objections (Docs. 251, 254), the undersigned concludes that neither order issued by the Magistrate Judge is clearly erroneous or contrary to law.

Consistent with the foregoing, the Court hereby **ADOPTS** the Magistrate Judge's R&R (Doc. 246). Petitioner's objections (Docs. 247, 251, 254) are **OVERRULED**.

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court